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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,599	10/16/2003	Riichiro Shirota	243712US2S DIV	5145
22850	7590	10/15/2004	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.				TRAN, THIEN F
1940 DUKE STREET				
ALEXANDRIA, VA 22314				
ART UNIT		PAPER NUMBER		
		2811		

DATE MAILED: 10/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/685,599	SHIROTA ET AL.	
	Examiner Thien F Tran	Art Unit 2811	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 28 July 2004.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 16-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 16-28,30,32 and 33 is/are rejected.
- 7) Claim(s) 29 and 31 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Objections***

Claims 22 and 29 are objected to because of the following informalities: lines 2-3 "by a second insulation film formed of a same material as that of the first insulation film" should be --with a second insulation film interposed therebetween, the second insulation film formed of a same material as that of the first insulation film-- for clarity. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 16-26 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The recitation of the resistance element and the second gate electrode being formed of a same material and not extending on the element region sets forth structure not supported by the specification. Applicant is requested to point out exactly wherein the application as originally filed provides the support for the recitation of the features as mentioned above. Indeed, Figure 6 shows the second gate electrode 7 extending on the element region 3 that is contradicting with

the claim languages in claim 16 requiring the second gate electrode 7 not extending on the element region.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 16-21, 23, 25-28, 30, 32 and 33 are rejected under 35 U.S.C. 102(e) as being anticipated by Yaegashi et al. (US 6,265,739).

Yaegashi et al. discloses the claimed semiconductor memory device (Figure 23 and 17) comprising: a semiconductor substrate 101; a first element isolating insulation film (218 in memory cell region) and a second isolating insulation film (218 in peripheral region of Figure 23 and 1 of Figure 17), for isolating an element region; a first gate electrode 106 including a first portion having a side surface in contact with a side surface of the first element isolating insulation film 218 and a second portion having a side surface aligned with the side surface of the first portion of the first gate electrode, the second portion projecting from an upper surface of the first element isolating insulation film 218; a second gate electrode 107 of polysilicon including a first portion provided on the first gate electrode 106 with a first insulation film 109 interposed therebetween and a second portion extending on the first element isolating insulation

film 218, the second portion having a thickness different from that of the first portion of the second gate electrode; and a resistance element 3 provided on the second element isolating insulation film 1, the resistance element being formed of polysilicon, the same material as that of the second gate electrode 107. The resistance element is not extending on the element region.

Regarding claims 20, 21 and 28, the second element isolating insulation film 218 in peripheral region other than memory cell region has an upper surface higher than that of the first element isolating insulation film 218 in the memory cell region.

Regarding claims 23 and 30, the second portion of the second gate electrode 107 and the resistance element 3 are isolated from each other on the second element isolating insulation film (1, 218).

Regarding claims 25 and 32, the first gate electrode 106 is a floating gate of a non-volatile semiconductor memory, and the second gate electrode 107 is a control gate electrode.

Regarding claims 26 and 33, the resistance element is part of a peripheral control circuit provided on a peripheral of a memory cell array region.

#### ***Allowable Subject Matter***

Claims 29 and 31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: prior art references do not teach or render obvious a semiconductor memory

device comprising the resistant element provided on the second element isolating insulation film with a second insulation film interposed therebetween, the second insulation film formed of a same material as that of the first insulation film.

Prior art references do not teach or render obvious a semiconductor memory device wherein the second element isolating insulation film has a part having a same height as that of the first element isolating insulation film.

***Response to Arguments***

Applicant's arguments with respect to claims 16-28, 30, 32 and 33 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thien F Tran whose telephone number is (571) 272-1665. The examiner can normally be reached on 8:30AM - 5:00PM Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eddie C Lee can be reached on (571) 272-1732. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

tt  
October 7, 2004

  
THIEN TRAN  
PRIMARY EXAMINER